

Easement Purchase Program

The Howard County Agricultural Land Preservation Program (ALPP) is offering property owners the opportunity to sell an agricultural preservation easement to the County. The County will pay up to a maximum of \$40,000 per acre to purchase agricultural easements. Property owners are encouraged to consider preserving their land now, as it is uncertain whether there will be future opportunities. Acquisitions will be made using installment purchase agreements (IPAs) that spread out semi-annual, tax-exempt interest and annual principal payments over the contract term.

Timing of Purchases

The County will accept applications for "Batch 14" easement sales between June 1, 2009 and July 31, 2009. County staff will then rate applications using the scoring formula. The Agricultural Land Preservation Board is expected to meet in fall 2009 to rank applications and make its recommendations to the County Executive. The County Council is expected to be asked to act on recommended applications by the end of 2009, so that formal offers can be made in early 2010. Closings will occur as soon as settlement documents can be prepared, probably before the end of 2010.

Terms of Easements

All Howard County agricultural preservation easements are perpetual and run with the land regardless of changes in ownership. By placing an easement on the property, the owner agrees that the land will only be used for agricultural purposes. The owner will be allowed only one existing or future principal dwelling on the property. Properties 50 acres or larger will have the right to subdivide one 1-acre unrestricted lot for each full 50 acres of easement property. An unrestricted lot can be sold to anyone. On properties 50 acres or larger, one nonsubdividable tenant house is allowed for each 25 acres, provided the need for a tenant house can be demonstrated.

Questions to Consider

Landowners considering selling an easement should consider the following questions and consult their legal and tax advisers for assistance:

- In whose name (personal, joint, trust, partnership, corporation) is the property held?
- What did you pay for the land when you acquired it or what was it worth when you inherited it?
- How much debt does the land secure and will the lender subordinate its mortgage to the deed of easement?
- How much of the value of the land should be allocated to the easement?
- In which tax bracket are you, and will you be, when you receive payments for the easement?
- If you are selling your easement for less than its fair market value, what is the value of the charitable contribution over the next six years given your individual circumstances?
- What will the estate tax liability of your heirs be and how will they pay it?

For More Information

To obtain applications and more information:

Joy Levy, Administrator
Agricultural Land Preservation Program
410-313-5407
jlevy@howardcountymd.gov

Mailing Address:

Howard County Department of Planning & Zoning
3430 Court House Drive, Ellicott City, MD 21043

The County's Temporary Office Location:

8930 Stanford Boulevard
Columbia, Maryland, 21045

Information is also on the County's Web site:

<http://www.co.ho.md.us/DPZ/agriculture.htm>



Howard County
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Agricultural Land Preservation Program

Purchase of Easements
2009/2010



Qualifying to Sell an Easement

To qualify for the ALPP program, properties must be 50 acres or larger; however, properties that are 20-50 acres qualify if they are adjacent to agricultural preservation easements, environmental preservation parcels, parkland, donated easements or other permanently protected land. Properties must also meet certain soils criteria to be eligible.

Determining the Purchase Price

The County uses a scoring system to determine the easement purchase price. Applicant properties are awarded points based on a variety of characteristics, including size, the capability and productivity of the soils, adjacency to protected land and other factors that impact agricultural viability.

The higher a property scores, the greater the easement offer will be. The maximum easement offer allowed is \$40,000 per acre, although the average easement offer will likely be about \$25,000 to \$35,000 per acre. In the event that Batch 14 is competitive and there are more applicants than funding to acquire easements, the scoring system will also be used to prioritize which easements the County will offer to purchase.

Installment Purchase Agreement

An IPA is a contract between the County and the selling landowner. The IPA is a binding obligation of the County. Howard County established the nation's first IPA program in 1989 and has purchased more than 100 easements using this innovative financing arrangement. The IPA promises to pay the purchase price, plus tax exempt interest, during the contract period. The County intends to offer IPAs with a 20-year term. To maximize the acreage that can be preserved, the county intends to pay the purchase price under each IPA in 20 equal annual principal installments.



Principal and Interest Payments

The tax-exempt interest rate will be set just prior to closing for each easement and will remain the same for the duration of the IPA. The interest rate will be based on market yields at the time of settlement of the first IPA in this Batch, but will be no higher than 4%. Interest payments will be made twice a year and principal payments will be made in equal annual installments.

Cost of Selling an Easement

The County strongly urges each seller to hire and consult with an accountant, tax attorney or financial advisor who can assist in assessing how the proceeds from selling an easement affect the seller's financial situation. The landowner will be responsible for certain costs associated with selling his or her easement to the County, including surveys and fees for consulting with financial advisors. All other costs of the program will be borne by the County.

Disclaimer: All persons considering selling an easement must rely on advice from their own tax or financial advisor to evaluate the possible financial benefits of the transaction for their individual circumstances and to advise on IRS treatment of the financial aspects of IPAs and other easement programs.

Closing on an Easement Sale

At closing, a landowner signs and gives a deed of easement to the County. This easement binds the seller and anyone else who owns or uses the land from ever developing it for anything but agricultural use. The easement is binding at closing and the County then owns the easement in perpetuity.

Benefits to Seller

At closing, a landowner will receive an opinion of bond counsel that the interest payments received from the IPA will be exempt from federal, state and local taxes. There is also the potential that landowners may be able to deduct a portion of the easement value on their income tax returns, depending on the differential between the appraised value of the easement and the sales price of the easement, under Section 170(h) of the Internal Revenue Code. Furthermore, there is the potential that capital gain on the sale of the easement may be deferred under Section 453 of the Internal Revenue Code. No opinion as to charitable contributions and capital gain is provided by the County. Each landowner is required to consult his or her own tax or financial advisor about these matters.

Selling the Land

The IPA has no effect on property ownership; property can be sold at any time. The easement runs with the land, thus the new landowner is subject to the terms of the deed of easement.

If the property is sold, the seller will continue to receive all remaining interest and principal payments on the IPA for the duration of the IPA contract.

Selling the IPA

IPAs can be transferred after a one-year holding period and can be transferred to heirs at any time to settle an estate.